

MINUTES OF THE
SPECIAL MEETING OF THE
GOVERNING BODY

Santa Fe, New Mexico

March 3, 2003

AFTERNOON SESSION: 3:00 P.M.

A Special Meeting of the Governing Body of the City of Santa Fe, New Mexico was called to order on this date at approximately 3:00 p.m. in City Hall Council Chambers. Following the Pledge of Allegiance and Invocation, Roll Call indicated the presence of a quorum, as follows:

Members Present:

Mayor Larry A. Delgado [leaving at 4:00 p.m.]
Councilor Carol Robertson Lopez, Mayor *Pro Tem*
Councilor Miguel M. Chavez
Councilor David Coss
Councilor Karen Heldmeyer
Councilor Matthew E. Ortiz
Councilor David Pfeffer
Councilor Rebecca Wurzbarger

Members Excused:

Councilor Patti J. Bushee

PUBLIC HEARING

CONSIDERATION OF RESOLUTION NO. 2003-28.

**(Councilor Chavez, Councilor Heldmeyer, Councilor Bushee,
Councilor Coss, Councilor Pfeffer and Councilor Lopez)**

**A Resolution Approving the National Pollution Discharge Elimination
System Plan and Submitting an Application for a Permit From the U.S.
Environmental Protection Agency.**

Mayor Delgado noted that this item was postponed to today at the February 26 Council meeting.

City Planner Marian Shirin presented a summary of her memorandum in the packet.

There was no one wishing to speak either for or against this resolution from the floor.

Councilor Heldmeyer remarked that this is a complicated issue that did not receive the level of scrutiny it should have until just before the February 26 Council meeting. She pointed out that the City is facing a federal mandate and must submit a plan of Best Management Practices to the EPA, committing the City to then implement those elements — and spend the necessary funding for that.

Councilor Heldmeyer distributed copies of a spreadsheet prepared by staff, stressing that, while the \$20 million sludge project has been eliminated, the City nonetheless will be required to undertake that project in accordance with federal mandates in another four years.

Councilor Heldmeyer noted that the spreadsheet consisted of page 1 and page 6 of Section 4.7 (Synopsis of Best Management Practices/Costs), with costs figured for implementing six Best Management Practices (BMPs) in Year 1 (2003-2004). [*Exhibit "A," attached.*]

Councilor Heldmeyer called attention to the section of the spreadsheet she had highlighted in yellow, calling for a \$1.50 monthly fee per customer. She noted that the fee would result in \$688,880 in one year, and over five years would yield \$3,555,599.

Councilor Heldmeyer noted that the current proposal calls for assessing commercial customers based on the size of the meter, but she would prefer basing the fee on the amount of impervious surface. She said that would include not just commercial entities but government entities.

Councilor Heldmeyer moved to adopt the plan highlighted in yellow on the spreadsheet, which would cost \$1.50 a month per customer; and to look at assessing nonresidential establishments on the basis of impervious square footage rather than on the size of the meter.

Councilor Chavez seconded the motion.

Councilor Chavez said he has been working with Ms. Shirin and other staff on a stormwater management plan with the idea that stormwater, over time, can be turned into an asset for the City through recharge of the aquifer.

Councilor Chavez reminded the Council that grant monies may be available to supplement the utility fee. He commented that some grants may impose higher standards, and he hoped the City would be willing to go above and beyond existing criteria in order to secure those grants.

Councilor Lopez asked staff if the City has any idea how much nonresidential impervious surface exists in the city; and if not, how much would it cost to get that information and develop a billing system based on that.

Wastewater director Costy Kasssieh responded that it would be at least a year before that information could be obtained. He said a GIS or GPS surveyor would have to be hired to look at all of the city's non-permeable areas, after which staff would return with recommendations on the fee structure.

Councilor Lopez asked how much it would cost to hire this consultant. She expressed concern that the City "not send dollars chasing after pennies."

Mr. Kasssieh clarified that the plan before the Council calls for a City employee with GPS surveying credentials to do the work.

Councilor Chavez asked staff to discuss the timeframe between adopting the NPDES Plan and implementing a stormwater utility fee or other mechanism to fund the Plan.

Utilities director Jerry Lowance clarified that the permit application is due by March 10 and the Plan has to be fully implemented by December 31, 2003. He said staff could begin working on implementation on July 1, 2003.

Councilor Chavez asked Mr. Lowance if that would allow enough time to adopt a plan, approve the ordinance, put the utility fee in place and then collect enough to get the projects underway.

City Planner Jeanne Price said it would take about two months to bring a rate structure ordinance through the committee process.

Mr. Lowance added that he did not know if the City would have to start spending money right away as of July 1, but it would have to “start doing something” in order to have the plan implemented by the end of December.

Councilor Heldmeyer withdrew the part of her motion that had to do with impervious surface in relation to payment.

Councilor Heldmeyer said she had amended her motion in order to “make it cleaner for what we send to the EPA.” She added, though, that she thought the City really needed to look at basing fees on square footage of impervious surface because it would result in a fairer fee structure.

Councilor Heldmeyer also amended her motion to include Councilor Chavez’s amendments, noting that the area in yellow on the spreadsheet supplemented the second amendment. [Exhibit “B,” attached.]

Councilor Chavez seconded the restated and amended motion.

Responding to requests for clarification, Ms. Shirin said the first of the three amendments would replace the “white book” completely with Mr. Lowance’s plan, as recommended by the City Manager and staff.

Ms. Shirin also clarified that the white plan was advertised before the proposed amendments were done; in the course of debating the implications of the white plan and how much the City wanted to spend for that, Councilor Heldmeyer asked her to develop the spreadsheet.

Ms. Shirin also explained that the last page of the spreadsheet included at least one project or piece of equipment under each of the BMPs. She noted that almost all personnel has been removed, and the \$2 million that Councilor Coss wanted for structures in the river was almost affordable under the “yellow” scenario – implementing the six mandated minimum control measure categories over five years would cost \$1,547,350; with the \$1.50 monthly fee, that would leave a balance of \$1.9 million.

City Manager Jim Romero stated that he would like to submit a document to EPA meeting the very basic requirements, which would cost about \$1.2 million to \$1.5 million. He noted that, according to the spreadsheet, the \$1.50 per month utility fee would produce \$3.4 million over five years, or about \$688,000 annually.

Councilor Wurzburger asked if the \$1.50 per month utility fee was mandated, and Ms. Shirin responded that it was not.

Councilor Wurzburger asked where the \$2 million Arroyo Mascaras structures project fit into the mandate, and Councilor Heldmeyer responded that it was not mandated, but the whole point of the NPDES Plan was to not pollute rivers and streams. She said the structures would have the added benefit of recharging the groundwater and lessening erosion.

Councilor Heldmeyer commented that stripping the plan down to the very minimum could be a problem because “the Feds have not told us what we can get away with.” She said she thought adding in the Arroyo Mascaras project would be adding a bit to “the bottom line.”

Councilor Heldmeyer also stated that she was not necessarily speaking to the Arroyo Mascaras, but to structures citywide.

Mr. Lowance pointed out that the EPA has published figures reflecting that it does not expect cities of Santa Fe’s size to charge more than \$9.17 per family per year.

Councilor Lopez said Councilor Heldmeyer’s proposed fee was twice that, and Mr. Lowance responded that this was correct.

Mr. Lowance also stated that, with respect to Best Management Practices, EPA has published “a toolbox” on its website of BMPs that the City can use to achieve compliance.

City EPA specialist Robert Gallegos added that, rather than setting an “end of the pipe” standard or a numerical standard, the EPA has developed a “narrative standard” for the BMPs that the City can follow and then determine, over a five year period, whether or not those are working.

Councilor Wurzburger recalled last weekend’s City Council retreat on the City’s financial picture over the next five years, and the difficulties that the City will face in covering rising costs. She therefore questioned how practical it is for the City to include river structures in an unfunded mandate, especially when they might not be required, since then the City could be giving its authority over to the EPA. She said she would like to see the river structures project done, but as part of another plan.

Councilor Lopez said she had a problem with assuming that families can afford another \$1.50 a month, or \$18 a year, when affordability in Santa Fe is a serious issue and when water is the City's top priority right now. She stated that the \$2 million river structure plan should be included in the CIP bonding process that occurs every other year instead.

Councilor Lopez said she only wanted to do what was required in this instance, and asked how much the fees would have to be raised to meet the minimal amount required.

Mr. Romero responded that the fees would be about \$1 per month per household, or \$12 a year, which would generate \$2.2 million over the next five years.

Councilor Lopez said that would create a surplus of \$996,000, and questioned why that was necessary. She commented to Mr. Romero, "I understand why you want to build in this extra money, but if it's not required, once we submit this plan we're going to be required to do that. That's my concern. So I don't think it should be in the plan that we submit. And if the Feds come back and say, hey, you're not doing enough, we want you to do more — then we can talk about increasing it."

Councilor Pfeffer said he appreciated Councilor Lopez's remarks from a fiscal perspective, but pointed out that no one really knew what the EPA would accept.

Councilor Pfeffer also stated that he was looking at this plan as a water supply issue, pointing out that the City doesn't have "a dime" set aside for water rights as part of the \$230 million in water projects that will be necessary over the next five years. He commented that a lot of water is going to waste as it becomes polluted, goes into the river and goes downstream without being absorbed by the aquifer — and this plan as proposed by Councilor Heldmeyer gives the opportunity to collect stormwater on a citywide scale beginning with the Arroyo Mascaras. He said it was therefore beside the point, in his mind, to say that the Arroyo Mascaras project or any other river structure project was superfluous.

Councilor Pfeffer commented that "half a loaf is better than none," and he would prefer to go in the other direction — to impose a \$2.50 per month utility fee instead of \$1.50, because the bulk of the money would go into structures, streets and drainage. He said, "I don't view these things as aesthetic; I view these things as necessary for the future of the community in terms of water."

Mayor Delgado said he thought it “strange” for the Council to ask the ratepayers for “top dollar” when it didn’t necessarily have to.

[Mayor Delgado excused himself from the proceedings to attend to another commitment and turned the gavel over to Mayor Pro Tem Lopez.]

Councilor Ortiz stated that this “hybrid plan” still gave little emphasis to improvement districts regarding payment for capital outlay in particular.

Councilor Ortiz noted that the Arroyo Mascaras project had been included in Year 2 of the older plan, and it was in this “hybrid” plan in Year 5, at which point the \$1.50 fee would have raised about \$1.8 million for this \$2 million project.

Councilor Ortiz asked Ms. Shirin if any studies have been done, based on the potential for maximizing groundwater recharge or stormwater recharge, on whether the Arroyo Mascaras gets more moisture than the Arroyo de los Chamisos.

Ms. Shirin responded that the \$100,000 listed under Construction Site Runoff Control and Post Construction Runoff Control would pay for two \$50,000 studies, one for what Councilor Ortiz was suggesting, and the other for an infrastructure study for the drainage system (pipes under the streets). She said an engineering study was in fact done for both the river watershed and Arroyo de los Chamisos watershed, but she did not know which one had more flow.

Councilor Ortiz asked Ms. Shirin if she was saying that the \$100,000 was not even for personnel, which was deleted, but only for studies.

Ms. Shirin responded by pointing out that the City wouldn’t know what to use the personnel for if it didn’t do the studies first.

Ms. Shirin also clarified that she had the \$100,000 in Year 1 because that’s where it appeared in the original plan.

Councilor Ortiz proposed an amendment that, in all places where it talks about funding sources (Sections 4.1 through 4.6), the first bullet point be consideration of assessment districts.

The amendment *was not* accepted as friendly.

Councilor Heldmeyer said she thought assessment districts worthy of discussion, but at this point it was not appropriate to include in the submittal.

Councilor Ortiz stated that “a small relatively select group of people” have been actively involved with staff in drafting this plan, and were trying to insert things into the plan that weren’t necessarily required.

Councilor Wurzburger seconded the motion for discussion.

In the course of discussion, Councilor Heldmeyer said her motion for approval spoke to river restoration structures and not necessarily the Arroyo Mascaras.

Councilor Ortiz said that should be changed on the yellow sheet, then, and Councilor Heldmeyer concurred.

Councilor Heldmeyer said she would accept Councilor Ortiz’ amendment as friendly if he changed the language “to change all of the places where it says funding source to *possible* funding source.”

Councilor Ortiz agreed to so revise his amendment.

Councilor Chavez stated that he would *not accept* the amendment until he questioned staff.

Responding to Councilor Ortiz’s statement that “a small select group of people” have worked on this item, Councilor Chavez pointed out that all of the Councilors have had the same opportunity to “engage and influence this federal mandate, and I think some engaged more than others, and that’s no one’s fault.”

Councilor Chavez asked Ms. Shirin if staff has fully researched the possibility of assessment districts.

Ms. Shirin responded that she did research the possibility of assessment districts at the request of Councilor Ortiz, when she did a comparison of assessment districts, impact fees and stormwater utility fees. She said she submitted that analysis to the Public Works Committee and Public Utilities Committee.

Councilor Chavez asked what the outcome was, and Ms. Shirin responded that staff recommended the stormwater utility fee because: 1) the stormwater utility fee would give a steady source of income, while the other two options would not; 2) it would be easier to enforce and levy than an assessment district, which tends to be more localized in addressing impacts; and 3) the rational nexus

developed by the City Attorney's Office was that "since everybody uses the streets, everybody generates stormwater, and so everyone should pay."

Councilor Chavez stated that he therefore did not want to see assessment districts as first on the list.

Councilor Ortiz said it did not have to be first, and could just be included as a possible funding source.

Councilor Chavez accepted the amendment as friendly.

Councilor Ortiz moved an amendment that all references in the white packet to Arroyo Mascaras River Project be stricken and replaced with "general river restoration projects."

Councilor Heldmeyer suggested "river and watershed restoration projects."

Councilor Chavez pointed out that this was not about "aesthetically restoring the riverbanks themselves — we're talking about the actual watershed."

Councilor Ortiz agreed, adding that the watershed includes all of the arroyos and the drainage facilities.

The amendment was accepted as friendly.

Responding to questioning from Councilor Coss, Mr. Romero stated that the EPA will expect the City to fund and complete anything included in the plan within five years. He said that was why he preferred to only submit the basic requirements in this plan. He stated that the City could then opt to enhance the plan through CIP monies, utility fees, grants, assessment districts, etc.

Councilor Wurzbarger said she was concerned that the City could find itself forced to do these "general river and water restoration projects" just because it was included in the plan, and with no guarantee at this point that the \$1.50 utility fee to cover the \$2 million in costs would be successfully imposed.

Councilor Coss pointed out that the City has a \$10 per year conservation fee imposed on households now, and that will go away in another year — so perhaps the argument for an \$18 per year utility fee was not as major as it sounded.

Councilor Heldmeyer was asked to restate her motion.

Councilor Heldmeyer moved that the plan to be presented to the EPA will be the practices, personnel, etc. that are in the third column from the right of the spreadsheet, i.e., where it states one year, \$688,880; that within that, a potential source of funding will include a bullet for assessment districts; and that any discussion of working on water structures will be general watershed and river structures and not any specific structure; that this plan replaces the white book; that the discussion of the Best Management Practices becomes an appendix; and to adopt the Resolution.

Councilor Chavez seconded the motion as restated.

Councilor Pfeffer said the second page in Councilor Chavez's amendments (previously submitted Exhibit "B") is effectively replaced by the third column from the right in the spreadsheet, and Councilor Heldmeyer said that was correct, but stated that the \$10.965 million listed for the five year total was now deleted.

Councilor Heldmeyer said the third page in Councilor Chavez' amendments was also included in her motion.

Councilor Pfeffer moved an amendment that, not as part of the plan to be submitted to the EPA, but in clarification of the Best Management Practices discussion, the Council adopt as friendly, and look kindly on, the 4.7 Section as a goal and not necessarily within the first five years.

The amendment was *not* accepted as friendly.

Councilor Pfeffer withdrew his amendment and asked that the Public Utilities Committee look into his recommendation.

Councilor Lopez moved an amendment that the \$2 million for general watershed projects be removed from the plan, since it would otherwise commit the City to follow through.

Responding to Councilor Coss' remarks about the \$10 conservation fee, Councilor Lopez pointed out that its purpose was to allow small drainage projects to address the watershed. She said she would prefer to keep those projects in the conservation fee area rather than as part of this federal mandate.

Councilor Wurzbarger seconded the amendment.

The amendment was defeated on the following Roll Call vote:

For: Councilor Lopez; Councilor Ortiz; Councilor Wurzburger

**Against: Councilor Chavez; Councilor Coss; Councilor Heldmeyer;
Councilor Pfeffer.**

Councilors conceded in the course of discussion that, without Mayor Delgado and Councilor Bushee present, a compromise would be necessary to achieve the necessary five votes for any action to be successful.

Councilor Coss asked Mr. Romero if he understood correctly that the City has no funding for any of the BMPs, and Mr. Romero responded that the funding would come after the EPA responded to the submittal in terms of whether it needed enhancements or not.

Councilor Wurzburger suggested that, since no line item budget was necessary at this point, the Council reach a compromise of putting forward the categories with a total budget amount. She stated that the Council would be unnecessarily tying its hands otherwise.

Councilor Heldmeyer asked Ms. Shirin how specific the submittal to the EPA has to be, i.e., could the City list the six BMPs and leave it at that.

Ms. Shirin responded that the initial plan was meant to incorporate many more objectives than the federal mandate. She said the plan submitted by Mr. Lowance, and recommended by the City Manager, was, according to Mr. Lowance and Mr. Romero, the minimum required submittal.

Councilor Heldmeyer asked Ms. Shirin if the EPA has offered any feedback. She commented that, since the EPA has given a suggested amount to charge, presumably they are interested in how much the plan is going to cost.

Ms. Shirin responded that she understood the EPA “doesn’t really care how much it costs — what they care about is that we do what we say we’re going to do, that the Best Management Practices are organized under six categories, and that two or three is probably the average under each category.”

Councilor Heldmeyer asked Ms. Shirin if it would be sufficient for the EPA, then, for the City to say it will hand out some pamphlets under Education; that it would do its best to deal with discharge by giving contractors a pamphlet saying, “Don’t have stuff run off your site”; and “we take stuff out of the arroyo when people throw it in the arroyo.”

Ms. Shirin responded that she assumed so, since the City has tried to do the Best Management Practices under each of the six categories. She said it would be up to the EPA to return and say the City should do more.

Ms. Shirin added that the \$9.17 annual cost described on the EPA website was actually just an average national cost.

Responding further, Mr. Gallegos said that he has looked at the Clean Water Act and the stormwater regulations, as well as the BMPs and their requirements, “and EPA has not mandated, other than that we address each of those six minimum control measures with a list of hundreds of Best Management Practices to deal with this issue. I believe that the plan in the so-called white book, and Mr. Lowance’s plan that came afterwards, will address, to EPA satisfaction, this permit requirement.”

Mayor Pro Tem Lopez remarked that there was apparently a filibuster going on until Councilor Bushee arrived.

Councilor Chavez said Councilor Bushee had indicated by phone that she was en route to this meeting.

Councilor Wurzburger called for the question. Councilor Ortiz seconded the motion, which was defeated on the following Roll Call vote:

For: Councilor Lopez; Councilor Ortiz; Councilor Wurzburger.

Against: Councilor Coss; Councilor Heldmeyer; Councilor Pfeffer; Councilor Chavez.

Councilor Wurzburger, recognizing that this submittal goes forward with no dollar figures attached, moved an amendment that the five-page plan (reflected by the spreadsheet) be submitted with the deletion of the part saying, “possible additions/deletions” and that the bullet “river restoration” be included as one pollution prevention/good housekeeping possibility.

The amendment was accepted as friendly.

Councilor Pfeffer if that still left intact the \$1.50 level, and Councilor Wurzburger said that was not included.

Councilor Wurzburger stated that she was proposing to replace the white book, Section 4.7, with the highlighted spreadsheet with all of the BMPs and no reference to money, and sending this forward with no money attached.

Councilor Heldmeyer said that was acceptable.

The motion, with the amendments, passed on the following Roll Call vote:

For: Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Pfeiffer; Councilor Wurzburger; Councilor Chavez; Councilor Coss.

Against: None.

COMMUNICATIONS FROM THE GOVERNING BODY

Councilor Lopez distributed a resolution extending the term of the Civic Center Task Force.

Councilor Ortiz said he understood that free estate planning services were no longer being provided to the Senior Centers, and asked Mr. Romero to look into when and how this happened.

Councilor Heldmeyer distributed a resolution on reviving the Traffic Calming Task Force to deal with some of the questions that have recently arisen.

ADJOURN

Its business completed, the Governing Body adjourned the meeting at approximately 5:15 p.m.

Approved by:

Mayor Larry A. Delgado

ATTESTED TO:

Yolanda Y. Vigil, City Clerk

Respectfully Submitted:

Judith S. Beatty, City Council Reporter